

October 2, 2001

Magalie Roman Salas
Secretary,
Federal Communications Commission
TW-A325
44512th Street., SW
Washington, DC 20554



Re: MM Docket No. 98-203
Notice of *Ex Parte* Presentation

Dear Ms. Salas:

On October 1, 2001, Andrew Jay Schwartzman of the Media Access Project, met with Susan M. Eid, Legal Adviser to the Chairman, to discuss the above captioned docket.

Mr. Schwartzman reiterated his clients' position that the plain language of Section 399B prohibits commercial advertising on any non-commercial licensed spectrum, including advertiser-supported ancillary and supplementary services. Mr. Schwartzman further stated that, as a policy matter, permitting public broadcasters to engage in practices virtually identical to those of private broadcasters runs counter to the purpose of the non-commercial set-aside. In particular, in light of the large number of diverse programmers seeking air-time (as demonstrated in part by the number of programmers who sought time on the public interest set aside when that became available in DBS), allowing public broadcasters to divert valuable spectrum to profit-making ventures is counter to the public interest. Mr. Schwartzman also observed that permitting public broadcasters to engage in such profit making ventures would antagonize the public, members of Congress, and commercial broadcasters, which would resent such activities on the part of publicly-funded stations.

Ms. Eid inquired as to whether the term "broadcasting" in Section 399B could not be construed as permitting a contrary result. Mr. Schwartzman emphasized that, at the time that Section 399B was adopted in 1981, all ancilliary uses of TV spectrum, including subscription services and teletext, were defined as "broadcasting." The fact that the Commission revised its application of Section 151(o) to subscription TV four years later has no bearing on what Congress might have intended in 1981, he said.

In accordance with Section 1.1206(b), 47 C.F.R. § 1.1206, this letter is being filed electronically with your office today.

Sincerely,

Andrew Jay Schwartzman
Counsel for UCC, *et al.*

cc: Susan M. Eid